Internal Revenue
bulletin

Bulletin No. 1999–26
June 28, 1999

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

REG–115086–98, page 6.

Proposed regulations under section 368(a)(1)(C) of the Code relate to the solely for voting stock requirement in certain corporate reorganizations. A public hearing is scheduled for October 5, 1999.

EMPLOYEE PLANS

Notice 99–33, page 3.

Weighted average interest rate update. The weighted average interest rate for June 1999 and the resulting permissible range of interest rates used to calculate current liability for purposes of the full funding limitation of section 412(c)(7) of the Code are set forth.

EXEMPT ORGANIZATIONS

Notice 99–36, page 3.

Charitable split-dollar insurance transactions. Taxpayers and organizations described in section 170(c) of the Code (including charities described in section 501(c)(3)) are advised that certain charitable split-dollar insurance transactions that purport to give rise to charitable contribution deductions under section 170 or 2522 of the Code will not produce the tax benefits advertised by their promoters. Furthermore, promoters of these transactions, and taxpayers and organizations participating in them, may be subject to other adverse tax consequences, including penalties.

Announcement 99–63, page 9.

A list is provided of organizations that no longer qualify as organizations to which contributions are deductible under section 170 of the Code.

Finding Lists begin on page 11.

Department of the Treasury
Internal Revenue Service

Mission of the Service

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the first Bulletin of the succeeding semiannual period, respectively.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rate Update

Notice 99–33

Notice 88–73 provides guidelines for determining the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987 and as further amended by the Uruguay Round Agreements Act, Pub. L. 103–465 (GATT).

The average yield on the 30-year Treasury Constant Maturities for May 1999 is 5.81 percent.

The following rates were determined for the plan years beginning in the month shown below.

Month	Year	Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
June	1999	6.04	5.44 to 6.34	5.44 to 6.65

Drafting Information

The principal author of this notice is Todd Newman of the Employee Plans Division. For further information regarding this notice, call (202) 622-6076 between 2:30 and 3:30 p.m. Eastern time (not a toll-free number). Mr. Newman's number is (202) 622-8458 (also not a toll-free number).

Charitable Split-Dollar Insurance Transactions

Notice 99–36

This notice is to alert taxpayers and organizations described in § 170(c) of the Internal Revenue Code (including charities described in § 501(c)(3)) about certain charitable split-dollar insurance transactions that purport to give rise to charitable contribution deductions under § 170 or 2522. Taxpayers and these organizations should be aware that these transactions will not produce the tax benefits advertised by their promoters. Furthermore, promoters of these transactions, and taxpayers and organizations participating in them, may be subject to other adverse tax consequences, including penalties.

In general, a charitable split-dollar insurance transaction involves a transfer of funds by a taxpayer to a charity, with the understanding that the charity will use the transferred funds to pay premiums on a cash value life insurance policy that benefits both the charity and the taxpayer's family. Typically, as part of this transaction, the charity or an irrevocable life insurance trust formed by the taxpayer (or a related person) purchases the cash value life insurance policy. The designated beneficiaries of the insurance policy include both the charity and the trust. Members of the taxpayer's family (and, perhaps, the taxpayer) are beneficiaries of the trust.

In a related transaction, the charity enters into a split-dollar agreement with the trust. The split-dollar agreement specifies what portion of the insurance policy premiums is to be paid by the trust and what portion is to be paid by the charity. The agreement specifies the extent to which each party can exercise standard policyholder rights, such as the right to borrow against the cash value of the policy, to partially or completely surrender the policy for cash, and to designate beneficiaries for specified portions of the death benefit. The agreement also specifies the manner in which it may be terminated and the consequences of such termination. Although the terms of these split-dollar agreements vary, the common feature is that, over the life of the split-dollar agreement, the trust has access to a disproportionately high percentage of the cash-surrender value and death benefit under the policy, compared to the percentage of premiums paid by the trust.

As part of the charitable split-dollar insurance transaction, the taxpayer (or a related person) transfers funds to the charity. Although there may be no legally binding obligation expressly requiring the taxpayer to transfer funds to the charity to assist in making premium payments, or expressly requiring the charity to use the funds transferred by the taxpayer for premium payments in accordance with the split-dollar agreement, both parties understand that this will occur.

The structure of charitable split-dollar insurance transactions varies. In some cases, a member of the taxpayer's family, a family limited partnership, or another type of intermediary related to the taxpayer is used as an intermediary rather than an irrevocable life insurance trust. This notice applies to any charitable split-dollar insurance transaction, regardless of whether a trust or some other type of related intermediary is used in the transaction.

Generally, to be deductible as a charitable contribution under § 170 or 2522, a payment to charity must be a gift. A gift to charity is a payment of money or transfer of property without receipt of adequate consideration and with donative intent. See Rev. Rul. 67-246, 1967-2 C.B. 104, which holds that a payment to charity may be deductible, to the extent it exceeds the fair market value of the benefit received, if the excess is paid with donative intent; and § 1.170A–1(h) of the Income Tax Regulations. *See also U.S. v. American Bar Endowment*, 477 U.S. 105 (1986), in which participants in a group insurance program operated by a charity were denied a charitable contribution deduction for a portion of the premium paid to the charity because the participants failed to show that they knowingly made payments to the charity in excess of the fair market value of the insurance.

However, regardless of whether a taxpayer receives a benefit in return for a transfer to charity or has the requisite donative intent, §§ 170(f)(3) and 2522(c)(2) provide that generally no charitable deduction is allowed for a transfer to charity of less than the taxpayer's entire interest (*i.e.*, a partial interest) in any property. Thus, no charitable contribution deduction is permitted when a taxpayer assigns a partial interest in an insurance policy to a charity. *See* Rev. Rul. 76–1, 1976–1 C.B. 57, which holds that a transfer to charity of an annuity contract constitutes a nondeductible gift of a partial interest where the transferor effectively retains the right under the annuity contract to purchase life insurance at reduced rates; and Rev. Rul. 76–143, 1976–1 C.B. 63, which holds that a transferor's irrevocable assignment of the cash surrender value of a life insurance policy to a charity, while retaining the right to designate the beneficiary and to assign the balance of the policy, is a transfer to charity of a nondeductible partial interest under § 170(f)(3).

Promoters of charitable split-dollar insurance transactions contend that a taxpayer participating in such a transaction is entitled to a charitable contribution deduction under § 170 or 2522 for the funds transferred to the charity. First, they contend that the funds transferred to the charity constitute unrestricted gifts because there is no obligation that legally binds the charity to pay the policy premiums with those funds. Second, promoters contend that charitable split-dollar insurance transactions do not violate the partial-interest rule in §170(f)(3) or 2522(c)(2) because the taxpayer generally is not a party to the split-dollar agreement with the charity and has no interest in the insurance policy.

In analyzing the federal tax consequences of a particular transaction, the Service is not required to respect the form of a taxpayer's transaction when to do so would yield a result that is inconsistent with the substance of the transaction. *See Commissioner v. Court Holding Co.,* 324 U.S. 331, 334 (1945); *Gregory v. Helvering,* 293 U.S. 465, 469–470 (1935). In *Blake v. Commissioner,* T.C.M. 1981–579, *aff'd,* 697 F.2d 473 (2d Cir. 1982), a taxpayer contributed appreciated stock to a charity. The charity sold the stock and used the proceeds to purchase the taxpayer's yacht at an inflated price. The Tax Court disregarded the form of the transaction and taxed it in accordance with its substance—as if the taxpayer had sold the stock and contributed the yacht to the charity. On appeal, the taxpayer contended that the charity had no legally binding obligation to purchase the yacht and that absent such an obligation the transactions must be treated according to their form. The Second Circuit disagreed with the taxpayer and held that there was a legal obligation on behalf of the charity to purchase the yacht, based on the doctrine of promissory estoppel. The court went on to state that "even if [the charity] were not legally obligated, the Tax Court's finding that the transactions were undertaken pursuant to an understanding arrived at in advance is sufficient to sustain the Commissioner's position." 697 F.2d at 474–475. *See also* Rev. Rul. 76–1, in which a taxpayer is treated, in substance, as retaining a right under an annuity contract to purchase life insurance at reduced rates even though, in form, the taxpayer had transferred complete ownership of the annuity contract to charity.

Similarly, in a charitable split-dollar insurance transaction, the Service will apply the substance-over-form doctrine based on the mutual understanding between the taxpayer, the trust (or other related intermediary), and the charity. The Service will treat the transaction as one in which the taxpayer obtains an insurance policy, pays premiums with respect to that policy, and transfers some of the rights under that policy to the trust and the remaining rights to charity. Because a taxpayer participating in a charitable split-dollar insurance transaction is treated as dividing the rights in the insurance policy between the trust and charity, the taxpayer does not come within the "transfer-of-an-entire-interest" exception to the partial-interest rule of §§ 170(f)(3)(B)(ii) and 1.170A–7(a)(2)(i) of the Income Tax Regulations. Thus, the Service will treat a taxpayer's participation in a charitable split-dollar insurance transaction as violating the partial-interest rule in §§ 170(f)(3) and 1.170A–7(a)(2)(i), and no income tax deduction under § 170 will be allowed to the taxpayer with respect to such a transaction. Similarly, pursuant to §§ 2522(c)(2) and 25.2522(c)–3(c)(1)(i) of the Gift Tax Regulations, no gift tax deduction under § 2522 will be allowed.

Promoters of charitable split-dollar insurance transactions contend that the assumptions used to value current life insurance protection under Rev. Rul. 64–328, 1964–2 C.B. 11, as clarified in Rev. Rul. 66–110, 1966–1 C.B. 12, are relevant in determining the value of benefits received by, and the amount of charitable deduction allowed to, taxpayers participating in these transactions. However, these revenue rulings do not apply to charitable split-dollar insurance transactions. Moreover, because the partial-interest rule does not allow any charitable deduction with respect to charitable split-dollar insurance transactions, there is no reason to determine the value of benefits received by the taxpayer in those transactions.

Depending on the facts and circumstances, the Service may challenge, on the basis of private inurement or impermissible private benefit, the tax-exempt status of a charity that participates in charitable split-dollar insurance transactions. In appropriate circumstances, the Service may assess taxes on excess-benefit transactions under § 4958, or self-dealing under § 4941, against any disqualified person who benefits from the charitable split-dollar insurance transaction and against certain of the charity's managers. The Service may also assess taxes on taxable expenditures under § 4945 against any private foundation that participates in such transactions and against certain of the foundation's managers. In addition, a charity that provides written substantiation of a charitable contribution in connection with a charitable split-dollar insurance transaction may be subject to penalties for aiding and abetting the understatement of tax liability under § 6701. The Service also will consider whether to require charities to report participation in charitable split-dollar insurance transactions on their annual information returns.

In addition, the Service may impose penalties on participants in charitable split- dollar insurance transactions, including the accuracy-related penalty under § 6662, the return-preparer penalty under § 6694, the promoter penalty under § 6700, and the penalty under § 6701 for aiding and abetting the understatement of tax liability.

DRAFTING INFORMATION

The principal author of this notice is Susan Kassell of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Ms. Kassell at (202) 622-4930 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

The Solely for Voting Stock Requirement in Certain Corporate Reorganizations

REG–115086–98

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the solely for voting stock requirement in certain corporate reorganizations under section 368(a)(1)(C) of the Internal Revenue Code. The proposed regulations provide that prior ownership of a portion of a target corporation's stock by an acquiring corporation generally will not prevent the solely for voting stock requirement in a "C" reorganization of the target corporation and the acquiring corporation from being satisfied. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by September 13, 1999. Requests to speak and outlines of topics to be discussed at the hearing scheduled for October 5, 1999, must be received by September 13, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–115086–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG–115086–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Marnie Rapaport, (202) 622-7550; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy R. Traynor, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A. *General Information*

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 368(a)(1)(C) relating to the definition of a "C" reorganization. A "C" reorganization is described as the acquisition by one corporation of substantially all of the properties of a target corporation in exchange solely for voting stock of the acquiring corporation (or solely for voting stock of its parent). See section 368(a)(1)(C). The use of money or other property will not prevent an exchange from qualifying under section 368(a)(1)(C) if at least 80 percent of the gross fair market value of all of the property of the target corporation is acquired for voting stock (the so-called boot relaxation rule). See section 368(a)(2)(B). The proposed regulations provide that prior ownership of a portion of a target corporation's stock by an acquiring corporation generally will not prevent the solely for voting stock requirement in a "C" reorganization of the target corporation and the acquiring corporation from being satisfied. These regulations propose to reverse the IRS's longstanding position that the acquisition of assets of a partially controlled subsidiary does not qualify as a tax-free reorganization under section 368(a)(1)(C).

B. *The Bausch & Lomb Doctrine*

The IRS's position that the acquisition of assets of a partially controlled subsidiary does not qualify as a tax-free reorganization under section 368(a)(1)(C) is articulated in Rev. Rul. 54–396 (1954–2 C.B. 147). This position subsequently was sustained in litigation in *Bausch & Lomb Optical Co. v. Commissioner*, 30 T.C. 602 (1958), *aff'd*, 267 F.2d 75 (2d Cir.), *cert. denied*, 361 U.S. 835 (1959) (the *Bausch & Lomb* doctrine). In Rev. Rul. 54-396, a parent corporation owning 79 percent of the stock of a subsidiary as the result of a prior unrelated cash purchase acquires all of the assets of the subsidiary in exchange for a block of the parent's voting stock. The block of the parent's stock that has been transferred to the subsidiary is then distributed in liquidation pro rata to its shareholders. The ruling concludes that the transaction does not qualify as a "C" reorganization under the 1939 Internal Revenue Code, but rather is a taxable liquidation of the subsidiary. The rationale of the revenue ruling is that the acquisition violates the solely for voting stock requirement, because the parent corporation acquires only 21 percent of the subsidiary's assets in exchange for the parent's voting stock, while the remaining 79 percent of the subsidiary's assets is acquired as a liquidating distribution in exchange for the previously held stock of the subsidiary.

In *Bausch & Lomb* (which had nearly identical facts to Rev. Rul. 54–396), the parent corporation, Bausch & Lomb, owned 79.9 percent of the stock of Riggs Optical Company. In order to acquire the assets of Riggs, Bausch & Lomb exchanged shares of its voting stock for all of the Riggs assets. Pursuant to a prearranged plan, Riggs subsequently was dissolved and distributed its only asset, the Bausch & Lomb shares, pro rata to its shareholders. The Tax Court and the Second Circuit Court of Appeals sustained the Commissioner's contention that the acquisition of the Riggs assets and the dissolution of Riggs should be viewed together as part of a single plan, and that the surrender by Bausch & Lomb of its Riggs stock constituted nonstock consideration in violation of the "C" reorganization requirements.

C. *The Solely for Voting Stock Requirement*

The "C" reorganization first appeared in 1921 when a tax-free reorganization was defined as a merger or consolidation "including the acquisition by one corporation...of substantially all of the properties of another corporation." Revenue Act of 1921, section 202(c)(2), 42 Stat. 227, 230. The statutory language failed to limit the type of permissible consideration, arguably allowing an acquisition for cash to qualify as a merger.

In 1934, Congress restricted the permissible consideration in an acquisition of a target's stock or assets (in other than a statutory merger or consolidation) to voting stock. Revenue Act of 1934, section 112(g)(1), 48 Stat. 680, 705. The stated purpose for this limitation was to "remove the danger that taxable sales [could] be cast into the form of a reorganization." See H.R. Rep. No. 704, 73d Cong., 2d Sess. 12–14 (1934), 1939–1 C.B. (Part 2) 554, 563–565; S. Rep. No. 558, 73d Cong., 2d Sess. 16–17 (1934), 1939–1 C.B. (Part 2) 586, 598-599.

D. *Reasons for Change*

The legislative history of the "C" reorganization provisions provides that the purpose of the solely for voting stock requirement in section 368(a)(1)(C) is to prevent transactions that resemble sales from qualifying for nonrecognition of gain or loss available to corporate reorganizations. The IRS and Treasury Department have concluded that a transaction in which the acquiring corporation converts an indirect ownership interest in assets to a direct interest in those assets does not resemble a sale and, thus, have concluded that Congress did not intend to disqualify a transaction from qualifying under section 368(a)(1)(C) merely because the acquiring corporation has prior ownership of a portion of a target corporation's stock. Because the judicial doctrine of continuity of interest arose from similar concerns, the regulations under §1.368–1(e)(1)(i) reach a similar conclusion with respect to the continuity of interest doctrine.

Moreover, the taxable treatment of the "upstream" "C" reorganization under the *Bausch & Lomb* doctrine contrasts with the tax-free treatment of the "upstream" "A" reorganization under section 368(a)-(1)(A). See also Rev. Rul. 57–278 (1957–1 C.B. 124) (*Bausch & Lomb* does not apply to an asset acquisition by a newly formed corporation in exchange for its parent's stock, even though prior to the acquisition the parent already owned 72 percent of the transferor's stock). In the "upstream" "A" reorganization, the indirect interest of the parent in the assets of its subsidiary (i.e., the target corporation) is converted into a direct interest in the subsidiary's assets. An exchange is deemed to occur for purposes of section 354 even if, in form, one does not occur. The IRS and Treasury Department have concluded that the "upstream" reorganization under section 368(a)(1)(C) (i.e., the *Bausch & Lomb* transaction) should not be treated differently from the "upstream" "A" reorganization solely because the acquiring corporation already owns stock in the target corporation. Accordingly, the IRS and Treasury Department have concluded that the *Bausch & Lomb* doctrine does not further the principles of reorganization treatment.

Explanation of Provisions

The proposed regulations provide that preexisting ownership of a portion of a target corporation's stock by an acquiring corporation generally will not prevent the solely for voting stock requirement in a "C" reorganization from being satisfied. If the boot relaxation rule applies, the sum of (i) the money or other property that is distributed in pursuance of the plan of reorganization to the shareholders of the target corporation other than the acquiring corporation and to the creditors of the target corporation pursuant to section 361(b)(3), and (ii) the assumption of all the liabilities of the target corporation (including liabilities to which the properties of the target corporation are subject), cannot exceed 20 percent of the value of all of the properties of the target corporation. In this regard, the proposed regulations provide that if, in connection with a potential "C" reorganization of a target corporation into an acquiring corporation, the acquiring corporation acquires the target corporation's stock for consideration other than its own voting stock (or voting stock of a corporation in control of the acquiring corporation if such stock is used in the acquisition of the target corporation's properties), whether from a shareholder of the target corporation or from the target corporation itself, such consideration will be treated as money or other property exchanged by the acquiring corporation for the target corporation's assets. Accordingly, the requirements of section 368(a)(1)(C) will not be satisfied unless the transaction can qualify under the boot relaxation rule of section 368(a)(2)(B). The determination of whether there has been an acquisition in connection with a potential "C" reorganization of a target corporation's stock for consideration other than an acquiring corporation's own voting stock (or voting stock of a corporation in control of the acquiring corporation if such stock is used in the acquisition of the target corporation's properties) will be made on the basis of all of the facts and circumstances.

Rev. Rul. 54–396 (1954–2 C.B. 147) will become obsolete when the proposed regulations are issued in final form.

The regulations are proposed to apply to transactions occurring after the date that a Treasury decision adopting these rules is published in the **Federal Register,** except that they do not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on the date the regulations are published as final regulations in the **Federal Register,** and at all times thereafter.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations and, because the proposed regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are timely submitted to the IRS. The IRS and Treasury request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 5, 1999, beginning at 10:00 a.m. in Room 2615 of the Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must request to speak, and submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 13, 1999. A period of ten minutes will be allocated to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Marnie Rapaport of the Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.368–2 is amended by adding paragraph (d)(4) to read as follows:

§1.368–2 Definition of terms

* * * * *

(d) * * *

(4) (i) For purposes of paragraphs (d)(1) and (2)(ii) of this section, prior ownership of a portion of the stock of the target corporation by an acquiring corporation will not by itself prevent the solely for voting stock requirement of such paragraphs from being satisfied. In a transaction in which the acquiring corporation has prior ownership of a portion of the stock of the target corporation, the requirement of paragraph (2)(ii) is satisfied only if the sum of the money or other property that is distributed in pursuance of the plan of reorganization to the shareholders of the target corporation other than the acquiring corporation and to the creditors of the target corporation pursuant to section 361(b)(3), and all of the liabilities of the target corporation assumed by the acquiring corporation (including liabilities to which the properties of the target corporation are subject), does not exceed 20 percent of the value of all of the properties of the target corporation. If, in connection with a potential acquisition by an acquiring corporation of substantially all of a target corporation's properties, the acquiring corporation acquires the target corporation's stock for consideration other than the acquiring corporation's own voting stock (or voting stock of a corporation in control of the acquiring corporation if such stock is used in the acquisition of the target corporation's properties), whether from a shareholder of the target corporation or the target corporation itself, such consideration is treated, for purposes of paragraphs (d)(1) and (2) of this section, as money or other property exchanged by the acquiring corporation for the target corporation's properties. Accordingly, the transaction will not qualify under section 368(a)(1)(C) unless, treating such consideration as money or other property, the requirements of section 368(a)(2)(B) and paragraph (d)(2)(ii) of this section are met. The determination of whether there has been an acquisition in connection with a potential reorganization under section 368(a)(1)(C) of a target corporation's stock for consideration other than an acquiring corporation's own voting stock (or voting stock of a corporation in control of the acquiring corporation if such stock is used in the acquisition of the target corporation's properties) will be made on the basis of all of the facts and circumstances.

(ii) The following examples illustrate the principles of this paragraph (d)(4):

Example 1. Corporation P (P) holds 60 percent of the Corporation T (T) stock that P purchased several years ago in an unrelated transaction. T has 100 shares of stock outstanding. The other 40 percent of the T stock is owned by Corporation X (X), an unrelated corporation. T has properties with a fair market value of $110 and liabilities of $10. T transfers all of its properties to P. In exchange, P assumes the $10 of liabilities, and transfers to T $30 of P voting stock and $10 of cash. T distributes the P voting stock and $10 of cash to X and liquidates. The transaction satisfies the solely for voting stock requirement of paragraph (d)(2)(ii) of this section because the sum of $10 of cash paid to X and the assumption by P of $10 of liabilities does not exceed 20% of the value of the properties of T.

Example 2. The facts are the same as in *Example 1* except that P purchased the 60 shares of T for $60 in cash in connection with the acquisition of T's assets. The transaction does not satisfy the solely for voting stock requirement of paragraph (d)(2)(ii) of this section because P is treated as having acquired all of the T assets for consideration consisting of $70 of cash, $10 of liability assumption and $30 of P voting stock, and the sum of $70 of cash and the assumption by P of $10 of liabilities exceeds 20% of the value of the properties of T.

(iii) This paragraph (d)(4) applies to transactions occurring after the date these regulations are published as final regulations in the **Federal Register,** except that this paragraph (d)(4) does not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on the date the regulations are published as final regulations in the **Federal Register**, and at all times thereafter.

* * * * *

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on June 11, 1999, 8:45 a.m., and published in the issue of the Federal Register for June 14, 1999, 64 F.R. 31770)

Deletion From Cumulative List of Organizations Contributions to Which Are Deductible Under Section 170 of the Code

Announcement 99–63

The names of organizations that no longer qualify as organizations contributions to which are deductible under section 170 of the Internal Revenue Code of 1986 are listed below.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that the organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170 where the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or deficiencies on the part of the organization which gave rise to the loss of qualification.

Moreover, if the Service has announced suspension of advance assurance of deductibility of contributions to an organization pending examination, and the qualification of the organization is subsequently terminated, contributions made after the date specified in the announcement in the Internal Revenue Bulletin are not deductible. In such a case, the date of suspension will appear after the name of the organization to which it applies.

Child Care, Inc.
Grand Junction, CO

Global Awareness, Inc.
San Diego, CA

Stabler Foundation, Inc.
Greenville, AL

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C.—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contribution Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedral Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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